

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Alondra Payan	Team: Squad #5	CCRB Case #: 202004084	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Saturday, 06/06/2020 9:00 AM	Location of Incident: 65th Street and 4th Avenue	Precinct: 68	18 Mo. SOL 12/6/2021	EO SOL 5/4/2022	
Date/Time CV Reported Mon, 06/08/2020 3:53 PM	CV Reported At: CCRB	How CV Reported: Call Processing System	Date/Time Received at CCRB Mon, 06/08/2020 3:53 PM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM David Mercado	11610	952007	ESS 06

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM David Giza	06971	958638	068 PCT
2. POM Muhammad Ghani	25393	963042	068 PCT
3. PO Mark Ozechowski	05860	949433	ESS 06

Officer(s)	Allegation	Investigator Recommendation
A.POM David Mercado	Abuse: Police Officer David Mercado threatened § 87(2)(b) with the use of force.	
B.POM David Mercado	Abuse: Police Officer David Mercado refused to provide his name to § 87(2)(b)	
C.POM David Mercado	Abuse: Police Officer David Mercado refused to provide his shield number to § 87(2)(b)	
§ 87(2)(g), § 87(4-b)		

## Case Summary

On June 8, 2020, § 87(2)(b) filed the following complaint via the CCRB call processing system.

On June 6, 2020, at approximately 9 a.m., § 87(2)(b) was walking to a corner store located at 65<sup>th</sup> Street and 4<sup>th</sup> Avenue in Brooklyn. Police Officers Mark Ozechowski and David Mercado of ESU Squad 6 happened to be stopped at the intersection, and PO Mercado and § 87(2)(b) had a conversation. PO Mercado allegedly said that he would “get tough” on § 87(2)(b) when he finished his tour (**Allegation A: Abuse of Authority, § 87(2)(g)**). PO Mercado refused to provide his name and shield number to § 87(2)(b) (**Allegations B-C: Abuse of Authority, § 87(2)(g)**). Police Officers David Giza and Muhammad Ghani of the 68<sup>th</sup> Precinct in Brooklyn were also nearby in a marked van and witnessed the incident. The incident concluded without any law enforcement action.

§ 87(2)(g), § 87(4-b)

The investigation did not obtain any video footage capturing the conversation between § 87(2)(b) and PO Mercado. § 87(2)(b) provided a cellphone clip from after the conversation (Board Review 01). § 87(2)(g), § 87(4-b)

On December 14, 2021, this case was reassigned from Inv. Stephen DiFiore to the undersigned.

## Findings and Recommendations

**Allegation (A) Abuse of Authority: Police Officer David Mercado threatened § 87(2)(b) with the use of force.**

**Allegation (B) Abuse of Authority: Police Officer David Mercado refused to provide his name to § 87(2)(b)**

**Allegation (C) Abuse of Authority: Police Officer David Mercado refused to provide his shield number to § 87(2)(b)**

It is undisputed that § 87(2)(b) requested PO Mercado’s name and shield number.

§ 87(2)(b) He recounted that there were barriers erected on the sidewalk at the time of the incident, such that he had to briefly walk in the middle of the street on his way to the store (Board Review 02). He encountered PO Ozechowski and PO Mercado’s truck near the intersection, and PO Mercado initiated the interaction by asking § 87(2)(b) if he could walk any slower. § 87(2)(b) and PO Mercado had an argument, during which PO Mercado asked § 87(2)(b) if he was a “tough guy,” exited his vehicle, and told him, “I’ll get tough on you when I get off work.” § 87(2)(b) interpreted PO Mercado’s remark as a threat. In response, § 87(2)(b) asked for his name and shield number, to which PO Mercado replied, “Tough guys don’t make complaints.” PO Mercado never verbally provided his information to § 87(2)(b). § 87(2)(b) attempted to look at PO Mercado’s uniform to read his name and shield number, but he was only able to see that his name began with “M” and that his shield number began with “11.” The incident ended when another officer guided PO Mercado back to his vehicle and the officers drove away. § 87(2)(b) acknowledged that he called PO Mercado a “bitch” multiple times as he was leaving.

PO Mercado was interviewed approximately 13 months after the incident (Board Review 03). He generally recalled the incident but could not remember many specific details about his conversation with § 87(2)(b). PO Mercado claimed that § 87(2)(b) initiated the conversation by

walking up to the vehicle, telling him to get out, and telling him something to the effect of, “I’ll fuck you up.” PO Mercado did not respond to § 87(2)(b)’s remark. PO Mercado did not recall himself or PO Ozechowski ever exiting the truck during the incident. PO Mercado acknowledged that § 87(2)(b) was walking slowly, but he could not recall if he ever asked § 87(2)(b) if he could walk any slower or made any comments about how he was walking. He denied that he ever threatened § 87(2)(b) with any physical force or said anything about what he was going to do when his tour ended. PO Mercado confirmed that § 87(2)(b) asked for his name and shield number. PO Mercado responded by pointing at the name and shield number on his uniform, and § 87(2)(b) looked where PO Mercado was pointing. PO Mercado could not recall for how long § 87(2)(b) looked at his nameplate. PO Mercado could not recall if he ever stated his name or shield number aloud to § 87(2)(b). PO Mercado did not remember what exactly § 87(2)(b) was saying as PO Mercado left the scene, but he knew generally that § 87(2)(b) was still cursing, yelling, and making threats. PO Mercado did not remember if any other officer ever tried to intervene or end the conversation between himself and § 87(2)(b).

PO Ozechowski recounted that § 87(2)(b) walking directly up the street in the middle of the road in a manner that would obstruct traffic (Board Review 04). PO Ozechowski honked to alert § 87(2)(b) that he was coming down the block. § 87(2)(b) approached the truck from the passenger side and spoke to PO Mercado briefly. PO Ozechowski did not remember the exact words used, but he remembered that the conversation was about § 87(2)(b) staying out of the road. He did not remember if PO Mercado said anything to § 87(2)(b) prior to this conversation. PO Ozechowski did not remember himself or PO Mercado getting out of the vehicle or having a reason to leave the vehicle. PO Ozechowski did not remember PO Mercado ever threatening § 87(2)(b) with the use of force. He did not remember § 87(2)(b) asking PO Mercado for his name or shield number, and he did not remember whether PO Mercado verbally stated his information.

PO Ghani confirmed seeing § 87(2)(b) interact with PO Mercado and PO Ozechowski (Board Review 05). He described PO Mercado and § 87(2)(b) talking loudly and appearing to argue. They were not at the point of screaming at each other. PO Ghani did not notice what triggered the argument. PO Ghani watched from approximately three car lengths away. PO Ghani could not hear the substance of the conversation. PO Ghani did not remember if PO Mercado was inside or outside the truck when the conversation started with § 87(2)(b). However, he did remember PO Mercado and PO Ozechowski being outside of the truck at some point.

PO Giza also recalled that § 87(2)(b) and PO Mercado were speaking loudly, but he could not hear the specific statements they were making to one another (Board Review 06). PO Giza did not remember if PO Mercado or PO Ozechowski were inside the truck when the conversation started or which of them spoke first.

PO Ghani and PO Giza both did not recall hearing any of the alleged remarks or any threats of force, and they both did not recall hearing § 87(2)(b) requesting any officer’s name or shield number. As noted above, they both testified that they could not hear the substance of § 87(2)(b)’s conversation with PO Mercado.

§ 87(2)(b) testified that PO Mercado did not state his name or shield number aloud, and PO Mercado could not recall if he did so. As a result, the investigation concluded that PO Mercado did not do so. At most, PO Mercado pointed at the information on his uniform.

NYPD Patrol Guide Procedure 203-09 (BR 07) requires that an officer must courteously and clearly state his rank, name, shield number, and command, or otherwise provide them, to anyone who requests he do so.

§ 87(2)(g)

§ 87(2)(b) made a clear request to PO Mercado for his name and shield number, so PO Mercado was required to state the information aloud or otherwise provide it. Merely pointing at his uniform, without making any effort to ensure that § 87(2)(b) was actually able to see his nameplate and shield, was not a sufficient response. As a result, § 87(2)(b) could not learn PO Mercado’s

name or shield number and was unable to provide that information when he filed this complaint. § 87(2)(b)

§ 87(2)(g), § 87(4-b)

### **Civilian and Officer CCRB Histories**

- § 87(2)(b)
- PO Ozechowski has been a member of the NYPD for 11 years and has been a subject in one CCRB complaint and one allegation.
  - 201504730 involved allegations of force against PO Ozechowski and was closed as complainant uncooperative.
  - § 87(2)(g)
- PO Mercado has been a member of the NYPD for ten years and has been a subject in four CCRB complaints and 16 allegations, nine of which were substantiated:
  - 201508826 involved substantiated allegations of stop, frisk, and search of person against PO Mercado. The Board recommended Charges, PO Mercado was found guilty, and the NYPD imposed a forfeiture of seven vacation days.
  - 201607556 involved substantiated allegations of chokehold, other force, physical force, stop, frisk, and refusal to provide name/shield number against PO Mercado. The Board recommended Charges. PO Mercado was found guilty of the guilty of the chokehold, physical force, and refusal to provide name/shield number allegations, and the NYPD imposed a forfeiture of 15 vacation days.

### **Mediation, Civil, and Criminal Histories**

- § 87(2)(b) declined to mediate this complaint.
- As of December 1, 2020, the New York City Office of the Comptroller has no record of a Notice of Claim being filed regarding this complaint (Board Review 09).
- § 87(2)(b)

Squad: 5

Investigator: Alondra Payan Inv. Alondra Payan February 3, 2022

	Signature	Print Title & Name	Date
Squad Leader:	<u><i>Daniel Giansante</i></u>	<u>IM Daniel Giansante</u>	<u>February 3, 2022</u>
2022	Signature	Print Title & Name	Date
Reviewer:	<u></u>	<u></u>	<u></u>
	Signature	Print Title & Name	Date